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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
RIVERSIDE DIVISION

In re:

LINCOLN JAMES INVESTMENT  
PROPERTIES, LLC,

Debtor.

Case No. 6:17-bk-17285-WJ

CHAPTER 11

**UNITED STATES TRUSTEE'S  
OBJECTION TO MOTION OF  
DEBTOR FOR APPLICATION FOR  
AUTHORITY TO EMPLOY THE  
TUROCI FIRM AS GENERAL  
BANKRUPTCY COUNSEL**

[Pursuant to LBR 9013-1(o), Request for  
Hearing]

**TO THE HONORABLE WAYNE E. JOHNSON, UNITED STATES BANKRUPTCY  
COURT JUDGE, DEBTOR, DEBTOR’S PROPOSED COUNSEL, AND ALL  
PARTIES-IN-INTEREST:**

Peter C. Anderson, the United States Trustee for the Central District of California,  
Region 16 (“U.S. Trustee”), pursuant to 11 U.S.C. § 330, Federal Rules of Bankruptcy 2014 and  
Local Bankruptcy Rule 2014-1, hereby objects to the *Motion of Debtor for Authority to Employ The  
Turoci Firm (“Firm”) as General Bankruptcy Counsel (the “Employment Application”).*<sup>1</sup>

**I. ARGUMENT**

**The Firm’s Request That The Debtor’s Insider Guarantee Its Fees Creates A Potential  
Conflict.**

The Debtor is a limited liability company. The Employment Application states that the  
Debtor’s members, Jared Scarth and Victoria Scarth, “have personally guaranteed the fees and costs  
of Debtor.” *Employment Application* pg. 4, ¶ 15. Under limited circumstances, some courts permit  
an insider to fund a debtor’s payments to counsel.<sup>2</sup>

But a guarantee agreement by an insider appears to be impermissible. *See In re Lotus  
Properties*, 200 B.R. 388, 393-94 (Bankr. C.D. Cal. 1996).

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<sup>1</sup> Docket No. 11. Unless stated otherwise, capitalized terms have the meanings defined in the  
Employment Application.

<sup>2</sup> A court may permit an insider to fund a debtor’s case if counsel satisfies a five-part test: (1)  
the arrangement must be fully disclosed to the debtor/client and the third party payor/insider; (2) the  
debtor must expressly consent to the arrangement; (3) the third party payor/insider must retain  
independent legal counsel and must understand that the attorney’s duty of undivided loyalty is owed  
exclusively to the debtor/client; (4) the factual and legal relationship between the third party  
payor/insider, the debtor, the respective attorneys, and their contractual arrangement concerning the  
fees, must be fully disclosed to the Court at the outset of the debtor’s bankruptcy representation; and  
(5) the debtor’s attorney/applicant must demonstrate and represent to the Court’s satisfaction the  
absence of facts which would otherwise create non-disinterestedness, actual conflict, or  
impermissible potential for a conflict of interest. *In re Lotus Properties*, 200 B.R. 388, 393-94  
(Bankr. C.D. Cal. 1996) (J., Goldberg).

Other bankruptcy courts in the Central District adopt a *per se* rule against the practice. *See  
In re Hathaway Ranch P’ship*, 116 B.R. 208, 219 (Bankr. C.D. Cal. 1990)

1 The Employment Application lacks information to allow the Court to assess whether a  
2 potential or actual conflict exists.

3 Scarth's testimony at the September 26, 2017 meeting of creditors, however, suggests  
4 multiple conflicts.

5 Mr. and Ms. Scarth own a business entity, Scarth & Associates, that currently serves as the  
6 Debtor's tenant. That entity is delinquent in its rental payments.<sup>3</sup>

7 Scarth also personally guaranteed the Debtor's secured debt and the secured creditor is  
8 looking to enforce that debt from either the Debtor or from the Scarth's. The interests of the Debtor  
9 and its members are not aligned and conflict.

10 *Lotus* expressly held that an actual conflict or impermissible potential conflict results if an  
11 insider guarantees the Debtor's fees and expenses or if the arrangement creates "individual legal  
12 liability" for the insider. *See Lotus*, 200 B.R. at 393-94. The personal guaranty here violates *Lotus*  
13 and should not be approved.

14 **II. CONCLUSION**

15 The U.S. Trustee respectfully requests that this matter be set for a hearing on the Court's law  
16 and motion calendar and that the Court deny the Employment Application until it is modified  
17 consistent with the concerns set forth above

18  
19 DATED: October 5, 2017

PETER C. ANDERSON  
UNITED STATES TRUSTEE

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21 By: /s/ Everett L. Green  
22 Everett L. Green  
23 Trial Attorney  
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<sup>3</sup> The rental income owed from Scarth & Associates is not disclosed on Schedule A/B. On Schedule A/B, the Debtor states that it is not owed accounts receivables or any other assets.